IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Writ Petition (Ld) No. 1103 of 2007

1. Sunflower Derivatives Private Limited, a company incorporated under the Companies Act, having its registered office at 106, Aakash Complex, 32/B, Govt. Service Housing Society, C.G.Road, Navrangpura, Ahmedabad 380 009 Gujarat

2. Manish Bagadia Indian Citizen, the Director of petitioner no.1 above-named having his office at 106, Aakash Complex, 32/B Government Service Housing Society, C.G.Road, Navrangpura, Ahmedabad 380 009, Gujarat ..Petitioners

vs.

1. Maharashtra State Co-operative Bank Limited, a Govt. company incorporated under the provisions of Maharashtra Cooperative Societies Act having its office at Maharashtra Chamber of Commerce Lane, Mumbai 400023

2. Honest Enterprises Ltd., a company incorporated under the Companies Act having its office at 17,Rangwala bldg. 58, Islampura Street, Mumbai 400 004 ..Respondents

Mr.S.K.Jain with Mr.Udayan Jain for petitioners.
Mr.D.R.Talankar for respondent no.1
Mr.S.D.Patil for respondent no.2.

Judgment Reserved on: 28.6.2007
Judgment delivered on: 19.7.2007

CORAM: SWATANTER KUMAR C.J.
AND C.S.DHARMADHIKARI J.
19th July, 2007

ORAL JUDGMENT: (Per S.C.DHARMADHIKARI J.)

1. The petitioners are challenging the decision of respondent no.1 Cooperative Bank f accepting the tender of respondent no.2 for sale of the property which was attached by the Bank in pursuance of the order/award in its favour.

2. Petitioner No.1 is a private limited company and a bidder who had submitted its bid for purchase of the property belonging to Jalgaon District Cooperative Starch Producing Society Ltd. This society is the borrower and had obtained a loan from respondent no.1 Bank. Upon default being committed, proceedings were initiated and the properties were attached. Subsequently they were put up for sale and public notice was issued. The Public Notice is dated 26th February, 2007. Pursuant to the same, the petitioners submitted a tender. It is contended that the petitioners were the highest bidder. Their revised offer is to the tune of Rs.10.53 crores. The bid of respondent no.2 was for Rs.10.31 crores. In other words, respondent no.2 was not the highest bidder.

3. The action of respondent no.1 Bank in refusing to accept the highest bid is faulted by the petitioners on the ground that the petitioners bid was not conditional as alleged. The alleged conditions were withdrawn and the revised offer of Rs.10.53 crores was submitted which, according to the petitioners, should have been accepted.

4. An affidavit is filed by respondent no.1 Bank pointing out therein the reasons as to why the bid of respondent no.2 has been accepted. The reasons that are assigned are that proceedings before the Debt Recovery Tribunal culminated in the auction notice and only Four (4) bids were received. One bidder did not pay the amount by Demand Draft and hence his tender was not considered. The remaining tenderers/bidders were invited for personal meeting and discussion at which respondent no.2 submitted unconditional offer which was accepted. Since the petitioners' offer was conditional, the same could not be accepted. Respondent No.1 denied the contention that the petitioners had withdrawn the conditions. The entire decision of the first respondent is annexed to the Affidavit in reply.

5. When this petition was placed before the learned Vacation Judges on 11th May, 2007, there was no affidavit

in reply and hence ad-interim relief was granted in terms of prayer clause (d). Thereafter the matter appeared before us on three occasions. The petitioners' Counsel informed the Court during the course of submissions that it is interested in enhancing its bid. It can offer an amount higher than that of the Bid amount of respondent no.2. Hence, we issued notice to respondent no.2 to match the revised bid/offer. However, as a pre-condition for further bidding we directed the petitioners to deposit a sum of Rs.10,00,000/- in Court and show their bonafides. That order was passed by us on 27th June, 2007. The order was passed in presence of the petitioners and after hearing their learned Counsel Mr. Jain at length. Mr. Jain specifically agreed to the directions issued as above and made a statement that Rs.10,00,000/- would be deposited in Court before the matter is heard further.

6. The petitioners' counsel on the adjourned date, in all fairness, stated that the petitiones could not arrange to deposit the sum of Rs.10,00,000/- in Court.

7. In the above circumstances when the petitioners are not willing to show their bonafides and take steps to match the bid of respondent no.2, we are not inclined to exercise our discretionary and equitable jurisdiction in

petitioners' favour. The petitioners cannot, after the decision is taken, file a petition and obtain an interim order to delay and thwart further proceedings. The petitioners are in commercial field. They know that decisions of this nature have vital consequences. It is quite likely that the successful bidder may opt out and would not deposit the balance sum although his tender is accepted because of litigation. It is in these circumstances that we called upon the petitioners to show their bonafides and they rightly agreed to do so. Now, having taken a chance and not fulfilled the commitment made to Court is something which disentitles them from invoking equitable jurisdiction of this Court. The petition is, therefore, summarily dismissed.

8. Before parting, we would like to emphasise the fact that respondent no.1 Bank after it obtained the award/decree in its favour and permitted to auction the property of the borrower in terms of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and rules framed thereunder so also the sale being required to be confirmed by D.R.T., its conduct is expected to be reasonable, just and fair. It should strive to get maximum price for the properties of the borrower. It has a duty to act fairly and in public interest. Therefore,

if the bid of substantially higher amount is received, then, the Bank must take appropriate decision. Sometimes the difference may be substantial. Unless, it is impossible to get the best price, the Bank must not push through the auction or sale. It may be that one more attempt/s may have to be made but as long as that subserves public interest and gets best possible price for both, namely, the bank and borrower, then, the wait is worthwhile. We hope that the facts and circumstances of the present case have highlighted this aspect enough and the Bank hereafter shall endeavour to obtain market price in such Auction sales. We leave the matter at that.

9. Petition is dismissed. However, there shall be no order as to costs.

(CHIEF JUSTICE)

(S.C.DHARMADHIKARI J.)